JUDGMENT OF THE COURT (First Chamber)

22 November 2007 *

In Case C-260/05 P,

APPEAL under Article 56 of the Statute of the Court of Justice, lodged on 20 June 2005,

Sniace SA, established in Madrid (Spain), represented by J. Baró Fuentes, abogado,

appellant,

the other parties to the proceedings being:

Commission of the European Communities, represented by V. Kreuschitz and J.L. Buendía Sierra, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Spanish.

supported by:

Republic of Austria, represented by H. Dossi, acting as Agent, with an address for service in Luxembourg,

Lenzing Fibers GmbH, formerly Lenzing Lyocell GmbH & Co. KG, established in Heiligenkreuz (Austria),

Land Burgenland,

represented by U. Soltész, Rechtsanwalt,

interveners at first instance,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Tizzano (Rapporteur) R. Schintgen, A. Borg Barthet and E. Levits, Judges,

Advocate General: J. Kokott,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 1 February 2007,

gives the following

Judgment

1 By its appeal, Sniace SA ('Sniace'), asks the Court to set aside the judgment of 14 April 2005 of the Court of First Instance of the European Communities in Case T-88/01 *Sniace* v *Commission* [2005] ECR II-1165 (hereinafter 'the judgment under appeal') which dismissed as inadmissible its action for the annulment of Commission Decision 2001/102/EC of 19 July 2000 on State aid granted by Austria to Lenzing Lyocell GmbH & Co. KG (OJ 2001 L 38, p. 33) ('the contested decision').

Facts

2 Sniace is a Spanish company whose principal activities are in the field of production of cellulose fibres (viscose).

3 At the time of the contested decision Lenzing Lyocell GmbH & Co. KG ('LLG') was a subsidiary of the Austrian company Lenzing AG, which produces, among other things, viscose fibres and modal. LLG's business also includes production and sale of lyocell, a new type of synthetic fibre made from pure natural cellulose.

4 By letter of 30 August 1995 the Austrian Republic informed the Commission of the European Communities of its intention to grant public aid to LLG for construction of a factory for the production of lyocell in a business park situated in the Land Burgenland (Province of Burgenland). In that letter, the Austrian authorities stated that the aid would be granted under the regional aid scheme with reference number N 589/95, authorised by the Commission by letter of 3 August 1995.

5 By letter of 5 October 1995 the Commission informed the Republic of Austria that individual notification of the intended aid in the form of subsidies was unnecessary since they were covered by an approved aid scheme, whilst putting it on notice not to grant aid in the form of guarantees to LLG without first informing the Commission.

6 On 14 October 1998 the Commission acted on miscellaneous information and initiated the formal examination procedure laid down in Article 93(2) of the EC Treaty (now Article 88(2) EC) ('the formal examination procedure') in respect of various measures adopted by the Austrian authorities in favour of LLG. The measures in question consisted of State guarantees for subsidies and loans amounting to EUR 50.3 million, a favourable price of EUR 4.4 per square metre for 120 hectares of industrial land, and guarantees of fixed prices for basic communal services for 30 years.

7 The other Member States of the European Union and interested parties were informed of initiation of the procedure and invited, by publication of a notice in the *Official Journal of the European Communities* of 13 January 1999 (OJ C 9, p. 6), to submit any observations they might have. The Austrian Government sent its observations by letters of 15 March and 16 and 28 April 1999. The United Kingdom Government and interested third parties — including the appellant, by letter of 12 February 1999 — also submitted their observations.

8 The Commission examined the information submitted to it and then, by letter of 14 July 1999, informed the Austrian Government of its decision of 23 June 1999 to extend the formal examination procedure to four other measures in favour of LLG. They included the following: ad hoc investment aid of EUR 0.4 million for acquisition of land, the taking of a dormant equity holding of EUR 21.8 million terminable only after 30 years and with a 1% per year return, aid of an unknown amount for the creation of company specific infrastructure, and environmental aid of EUR 5.4 million, which might have been granted otherwise than in accordance with an existing aid scheme.

9 By publication of a second notice in the *Official Journal of the European Communities* of 4 September 1999 (OJ 1999 C 253, p. 4), the Commission informed the Member States and interested parties of the extension of the formal examination procedure and invited them to submit any observations they might have. By letters of 4 October 1999 the appellant and the Austrian Government submitted their respective observations. The United Kingdom Government and other interested parties also submitted their observations.

10 On 19 July 2000 the Commission adopted the contested decision. In that decision the Commission held, first, that some of the measures in question were not State aid and, secondly, that other measures represented aid compatible with the EC Treaty.

11 The operative part of that decision is as follows:

'*Article 1*

The aid which Austria has granted to ... (LLG) Heiligenkreuz, through the provision of guarantees amounting to EUR 35.80 million (a guarantee by a consortium of commercial and public-sector banks amounting to EUR 21.8 million and three guarantees by the ... amounting to EUR 1.4 million, EUR 10.35 million and EUR 2.25 million) and through a land price of EUR 4.4 per [square metre] for the acquisition of 120 hectares of industrial land, through fixed-price guarantees by the Province of Burgenland for the provision of process utilities and through the provision of aid of an unknown amount in the form of the creation of company-specific infrastructure, does not constitute aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

The aid which Austria has granted to LLG through the provision of a guarantee amounting to EUR 14.5 million by WiBAG complies with the guarantee guidelines approved by the Commission under number N 542/95.

The environmental aid amounting to EUR 5.37 million complies with the environmental aid guidelines approved by the Commission under number N 93/148.

Article 3

The individual aid which Austria has granted in the form of aid amounting to EUR 0.4 million for land acquisition and in the form of equity capital amounting to EUR 21.8 million is compatible with the common market.

Article 4

This Decision is addressed to the Republic of Austria.'

Procedure before the Court of First Instance and the judgment under appeal

12 By application lodged at the Court Registry on 17 April 2001, Sniace brought an action for the annulment of the contested decision and for the award of costs against the Commission.

13 By order of the President of the Fifth Chamber (Extended Composition) of the Court of 18 February 2002, the Republic of Austria, LLG and Land Burgenland were given leave to intervene in support of the Commission.

14 By the judgment under appeal, the Court of First Instance of its own motion decided to examine the issue of the applicant's *locus standi* and ruled that the action was inadmissible.

15 At paragraph 54 of that judgment, the Court began by stating that, since the contested decision was addressed to the Republic of Austria, it was necessary, pursuant to the fourth paragraph of Article 230 EC, to examine whether that decision was of direct and individual concern to Sniace.

16 As regards the question whether the applicant was individually concerned by the contested decision, the Court of First Instance stated at paragraph 55 of the contested judgment that, according to settled case-law, persons other than those to whom a decision is addressed may claim to be concerned individually only if that decision affects them by reason of certain attributes peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed.

17 The Court then stated, in paragraph 56 of that judgment, that as regards, more particularly, the field of State aid, not only the undertaking in receipt of the aid but also the undertakings competing with it which have played an active role in the procedure initiated pursuant to Article 88(2) EC in respect of an individual aid have been recognised as being individually concerned by the Commission decision closing that procedure, provided that their position on the market is substantially affected by the aid which is the subject of the contested decision (Case C-169/84 *Cofaz and Others* v *Commission* [1986] ECR 391, paragraph 25).

18 Accordingly, in paragraph 58 of the judgment under appeal, the Court considered it necessary to examine to what extent the applicant's participation in the formal examination procedure and the effect of the aid on its market position were capable of distinguishing it, in accordance with Article 230 EC.

19 As regards the participation of the applicant in that procedure, the Court found, in paragraph 59 of that judgment, that the applicant played no more than a minor role for the following reasons:

'First, ... [Sniace] lodged no complaint with the Commission. Secondly, the conduct of the procedure was not largely determined by the observations which it submitted by its letters of 12 February and 4 October 1999 (see, to that effect, *Cofaz and Others* v *Commission*, paragraph 24). Thus, in its observations of 12 February 1999, the applicant confines itself, in essence, to reproducing certain of the Commission's findings in the [formal examination] procedure, commenting on them briefly, but without providing any specific evidence. Likewise, in its observations of 4 October 1999, it confines itself to asserting, without giving the least detail or any evidence, that the measures referred to in the decision to extend the [formal examination] procedure amount to State aid and that they should be declared incompatible with the common market.'

20 As regards whether the applicant's position on the market was affected, the Court of First Instance began by stating, at paragraph 61 of the judgment under appeal, that the measures referred to in the contested decision concerned exclusively a factory for the production of lyocell and it was common ground that the applicant neither manufactured that type of fibre nor foresaw doing so in the future.

21 The Court then examined, in paragraphs 63 to 78 of the judgment, the arguments put forward by the applicant to establish that its position on the market might none the less be substantially affected by the contested decision. Those paragraphs are worded as follows:

'63 First, in its application, [Sniace] alleges, in essence, that viscose and lyocell are in direct competition with each other.

64 Without it being necessary, at the stage of considering admissibility, to rule definitively on the exact limits of the market for the products in question, it suffices to hold that that allegation is undermined by various evidence in the case-file.

65 First, lyocell has certain physical characteristics which differentiate it clearly from viscose fibre. ...

66 The applicant's assertion that lyocell can be substituted for viscose "in most applications" is not convincingly substantiated. ...

67 Furthermore, that assertion is contradicted by LLG's statement at a conference, which the applicant invokes in support of its argument (paragraph 30 of and Annex 14 to the application) and according to which lyocell is "an additional fibre whose applications are different".

68 Secondly, it is common ground that the price of lyocell is substantially higher than that of viscose fibres. ...

69 Finally, according to the applicant's own statements, the manufacturing processes of lyocell, on the one hand, and that of viscose fibres, on the other hand, differ to a great extent. ...

70 In any event, even assuming that there is a direct competitive relationship between lyocell and viscose fibre, the applicant's statements in its pleadings and, more particularly, in the note in Annex 14 to its application, do not establish sufficiently that the contested decision is capable of significantly affecting its position on the market. The statements contained in that note are based, in fact, on completely unsupported assumptions, such as the fact that LLG's production of lyocell has, since 1997, completely replaced that of viscose and that it is intended exclusively for the European market. In addition, in that note, the applicant asserts that, because "[LLG's] supply is equivalent to 3.5% of the market" the applicant ceased, from 1997, to produce, and therefore to sell, certain quantities of viscose without substantiating its statement with any evidence and without even providing any explanation whatever on the method by which it calculated those quantities. Similarly, it must be observed that it adduces no evidence in support of its allegation that the "supply led to a change of at least ...% in the market price".

71 Secondly, the applicant invokes the existence of, besides "pure lyocell" and proviscose, "sub-standards of lyocell" which it also describes as lyocell of "lower quality". ...

72 In that regard, it must be stated that the evidence in the file does not establish the existence of different qualities of lyocell. It must be pointed out, more particularly, that, in its pleadings, the applicant gives no detail as to what the expression "sub-standards of lyocell" covers. It did not, moreover, seriously challenge the statement made on several occasions by LLG and [Land] Burgenland at the hearing that inferior quality lyocell does not exist. ...

73 Even assuming that LLG produces inferior quality lyocell which it sells at extremely low prices, the applicant has not at all substantiated its argument

that, as a result, it had to lower its prices for "products of the same quality". Nor, moreover, does it substantiate in any way the quantities and price reduction upon which it relies.

74 Thirdly, in its reply and in its observations on the statements in intervention, the applicant places greater reliance on the competition which, it submits, exists between proviscose and viscose. It claims that its situation on the market is affected by the fact that LLG markets proviscose at prices competitive to those of viscose and that, having regard to the higher quality of the former, customers prefer it to the latter.

75 In that regard, it must be stated that the applicant again merely makes allegations which are insufficiently substantiated.

...

78 It follows from the foregoing considerations that the applicant has not adduced pertinent reasons to show the contested decision may adversely affect its legitimate interests by seriously jeopardising its position on the market.'

22 The Court of First Instance concluded in paragraphs 79 and 80 of the judgment under appeal, that in the light of that fact and of the limited role played by the applicant in the formal examination procedure, the applicant could not be held to be individually concerned by the contested decision. Consequently the action had to be declared inadmissible and there was no need to consider whether the applicant was directly concerned by the contested decision.

Forms of order sought by the parties

23 In its appeal, Sniace claims that the Court should:

— set aside the judgment under appeal;

— allow the claims made at first instance, or if appropriate, refer the case back to the Court of First Instance for it to rule on the substance of the case;

— allow the request for measures of organisation of procedure made by the applicant on 16 October 2001 and the request for parties to appear in person, for evidence to be led and for an expert's report made by the applicant on 20 April 2001; and

— order the defendant at first instance to pay the costs.

24 The Commission contends that the Court should:

— declare the first three grounds of this appeal to be inadmissible or alternatively, reject them as unfounded;

— reject the fourth ground of this appeal as unfounded; and

— order the appellant to pay the costs; or

— alternatively, if the appeal is allowed, refer the case back to the Court of First Instance for a decision on the substance of the case.

25 Lenzing Fibers GmbH ('Lenzing Fibers') and Land Burgenland claim that the Court should:

— dismiss the appeal;

— order the appellant to pay their costs.

26 The Republic of Austria contends that the Court should:

— dismiss the appeal as unfounded;

— order the appellant to pay the costs.

The appeal

27 Sniace puts forward four grounds in support of its appeal. The first ground is that the judgment under appeal is vitiated by an error of law in that the action was ruled to be inadmissible on the basis that the applicant had not demonstrated that its position on the market was likely to be affected substantially by the contested decision. The applicant's second ground is that the Court of First Instance erred in law by ruling the action to be inadmissible on the basis that the applicant had a minor role within the formal examination procedure. The third ground of appeal is that the right to effective judicial protection was infringed. The fourth ground of appeal, which is in two parts, is that there was an infringement of the principle of equality of treatment and also of certain provisions of the Rules of Procedure of the Court of First Instance.

The first ground of appeal

Arguments of the parties

28 By its first ground of appeal, Sniace claims that the Court of First Instance erred in law by ruling its action to be inadmissible on the basis that the applicant had not adduced pertinent reasons to show the contested decision might adversely affect its legitimate interests by substantially affecting its position on the market.

29 The appellant's first criticism of the Court of First Instance is that it did not take account of certain information which established that the lyocell fibre produced and marketed by LLG competed directly with the viscose fibre produced and marketed by Sniace. First, the appellant claims that LLG introduced onto the market different types of lyocell, of lower quality and lower price, known as 'lyocell sub-standards',

which were in competition with the viscose fibre for certain applications. The conclusion expressed by the Court of First Instance, in paragraph 72 of the judgment under appeal, that 'the evidence in the file does not establish the existence of different qualities of lyocell' was inaccurate in the light of the information produced by the applicant at first instance. In particular, that conclusion is contradicted by the statements of one of LLG's directors quoted in an article of a specialist magazine annexed to the application at first instance. Secondly, according to the appellant, the Court of First Instance did not take sufficient account of evidence relating to the fact that after the grant of the aid at issue LLG marketed at competitive prices proviscose, which is a mixture of viscose and lyocell which entered into competition with other fibres such as viscose.

30 Secondly, the appellant claims that the Court of First Instance did not take into consideration the following specific circumstances which distinguish it individually from any other economic operator;

— the fact that Sniace belongs to a 'closed circle' of undertakings which are potential competitors of LLG, namely the undertakings active in the cellulose fibres sector (lyocell, viscose and modal); and

— the overcapacity in the cellulose fibres market, with the consequence that the increase in LLG's production capacity might directly and substantially affect the competitiveness of producers already present in that market.

31 Thirdly, the applicant contests the statements made by the Court of First Instance at paragraphs 70 and 77 of the judgment under appeal to the effect that, even assuming that lyocell and viscose or proviscose and viscose are in competition with each other,

Sniace had not provided any indication of the losses or other negative consequences which it had suffered as a result of the contested decision. The appellant asserts that it did submit such evidence, in particular by production of a document, namely Annex 14 to its application at first instance, containing precise data on the losses suffered by Sniace as a result of the marketing of lyocell at an artificially low price.

32 The Commission contends that the ground of appeal is inadmissible since it does no more than challenge the assessment of the facts made by the Court of First Instance.

33 The Republic of Austria, Lenzing Fibers, and Land Burgenland also contend that the ground of appeal is inadmissible, in that it is based on new facts and new evidence, refers on several occasions to the merits of the contested decision rather than of the judgment under appeal and, contrary to the requirements of Article 225(1) EC and the first paragraph of Article 58 of the Statute of the Court of Justice, is not restricted to questions of law.

Findings of the Court

34 First, it must be held that, although Sniace argues there was an error of law, the appellant is, by its first ground of appeal, in reality seeking to challenge the assessment of the facts by the Court of First Instance, the substance of that challenge being that the Court did not take adequate account of certain facts and certain documents relied on by the applicant at first instance to support its case that the lyocell and viscose fibres were in direct competition.

35 In that regard, it must be borne in mind that, in an appeal, the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the Court of First Instance accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it (Case C-7/95 P *Deere* v *Commission* [1998] ECR I-3111, paragraph 22, and Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries and Nippon Steel* v *Commission* [2007] ECR I-729, paragraph 38). Save where the evidence adduced before the Court of First Instance has been distorted, the appraisal therefore does not constitute a point of law which is subject to review by the Court of Justice (Case C-53/92 P *Hilti* v *Commission* [1994] ECR I-667, paragraph 42, and Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraph 49).

36 It follows that the first ground of appeal is admissible only to the extent that it seeks to demonstrate that the Court of First Instance distorted the evidence.

37 It is clear from the case-law of the Court that there is such distortion where, without recourse to new evidence, the assessment of the existing evidence is manifestly incorrect (Case C-551/03 P *General Motors* v *Commission* [2006] ECR I-3173, paragraph 54; Case C-167/04 *JCB Service* v *Commission* [2006] ECR I-8935, paragraph 108, and Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraph 37).

38 As regards Sniace's argument that the Court of First Instance distorted the content of an article published in the specialist magazine 'Textil Expres', attached to its application, by declaring that the material in the documents before the Court did not establish that lyocell of differing quality existed, it is sufficient to hold that, although the article in question refers to various varieties of lyocell fibres marketed by LLG, a reading of the passages in that article quoted by the appellant in its appeal does not,

as was pointed out by the Advocate General in point 29 of her Opinion, permit the unambiguous conclusion that those varieties were of a lower quality which competed on price with viscose. In addition, that same article, as the Court of First Instance observed at paragraph 67 of the judgment under appeal, states that, in comparison with viscose, lyocell constitutes 'an additional fibre whose applications are different'. The content of that document cannot therefore call into question the conclusion arrived at by the Court of First Instance that there was no direct competition between viscose and lyocell.

39 As regards, next, the information on the harm suffered as a result of the contested decision which Sniace claims was provided by it but disregarded by the Court of First Instance, it must be held that the note in Annex 14 to the application at first instance, to which the appellant refers in its appeal, depends specifically, as is clear from the preceding paragraph, on the unsupported assumption that there is direct competition between the lyocell and viscose fibres.

40 In those circumstances, the first ground of appeal must be rejected as in part inadmissible and in part unfounded.

The second ground of appeal

Arguments of the parties

41 By its second ground of appeal, the appellant claims that the Court of First Instance erred in law by ruling its action to be inadmissible on the basis that it played a minor role in the formal examination procedure which led to the contested decision.

42 Sniace submits, first, that for the purposes of assessing the extent of its participation in that procedure the Court of First Instance erred by referring to paragraphs 24 and 25 of *Cofaz and Others* v *Commission*, since that judgment related to factual circumstances which differed from those of the present case. Sniace states that unlike the applicant in *Cofaz and Others* v *Commission* it did not lodge a complaint but intervened in the procedure as a 'party concerned' within the meaning of Article 88(2) EC, after it was invited by the Commission to submit observations. The significant point then is that, by specifying it as a source of information, the Commission granted to the appellant an individual procedural right capable of legal protection by the Community judicature.

43 Next, the appellant claims that, contrary to what is stated in paragraph 59 of the judgment under appeal, its role within the formal examination procedure cannot be described as minor. In particular, the observations submitted by Sniace to the Commission did have a certain effect on the conduct of that procedure, and in particular contributed to that procedure being extended to other aid measures.

44 Lastly, even if it were true that it played only a minor role within the formal examination procedure, the appellant denies that that factor alone can justify restricting its standing to bring proceedings. On the contrary, in Case T-380/94 *AIUFFASS and AKT* v *Commission* [1996] ECR II-2169 the Court of First Instance expressly recognised that the right to bring proceedings against a decision of the Commission in relation to State aid cannot depend on the extent to which the applicant participates in the formal examination procedure. Further, that approach is consistent with the fact that, of necessity, the 'parties concerned' play a limited role in the course of that procedure. They have no right of access to the documents and therefore are largely dependent on material published by the Commission in the notice of initiation of that procedure. In those circumstances, the appellant cannot be criticised for not having commented on material which the Commission did not refer to in its notices of initiation and extension of the formal examination procedure or in other public documents to which Sniace, as an interested third party, had no access prior to adoption of the contested decision.

45 The Commission and the Austrian Government submit that this ground of appeal is inadmissible because it seeks to call into question the factual assessment made by the Court of First Instance.

46 Alternatively, the Commission contends that is clear from *Cofaz and Others* v *Commission* that each of three conditions must be satisfied before an action brought by a competing undertaking against a decision taken following a formal examination procedure can be admissible:

— the undertaking concerned must be at the origin of the complaint which led to the opening of that procedure;

— the conduct of that procedure must have been largely determined by the observations of that undertaking; and

— the undertaking must establish that its position on the market was substantially affected by the aid measure in question.

47 In the present case, none of those conditions is satisfied by the appellant. In particular, as regards the condition relating to the role played by the appellant within the formal examination procedure, the Commission contends that the observations submitted by Sniace essentially just paraphrased and approved the content of the decision to initiate the procedure, and added practically no information.

48 According to Lenzing Fibers and Land Burgenland, the ground of appeal is inadmissible since it is of no relevance to the present action. In accordance with Case C-106/98 P *Comité d'entreprise de la Société française de production and Others* v *Commission* [2000] ECR I-3659, even active participation in the formal examination procedure is not a condition sufficient to confer on an undertaking the standing to bring legal proceedings where, on any view of the matter, as in the present case, its position on the market has not been noticeably affected.

Findings of the Court

49 As regards the admissibility of this ground of appeal, as has been previously stated, it is clear from Article 225(1) EC and the first paragraph of Article 58 of the Statute of the Court of Justice that an appeal is limited to points of law and must be based on grounds of lack of jurisdiction of the Court of First Instance, breach of procedure before it which adversely affects the interests of the applicant, or infringement of Community law by the Court of First Instance (see, among others, Case C-284/98 P *Parliament* v *Bieber* [2000] ECR I-1527, paragraph 30; the order in Case C-420/04 P *Gouvras* v *Commission* [2005] ECR I-7251, paragraph 48; and the order of 20 March 2007 in Case C-323/06 P *Kallianos* v *Commission*, not published in ECR, paragraph 10).

50 In the present case, contrary to what is contended by the Commission and the Austrian Government, this ground of appeal does not merely challenge the appraisal of the facts made at first instance but contests the interpretation of the conditions governing the *locus standi* of interested third parties which the Court of First Instance applied when it considered the participation of the appellant in the formal examination procedure and consequently raises a question of law.

51 It follows that the ground of appeal is admissible in that it is directed against the account taken by the Court of First Instance of the extent to which the appellant participated in that procedure.

52 As regards whether that ground of appeal is well-founded, it must first be observed that, under the fourth paragraph of Article 230 EC, no natural or legal person may institute proceedings against a decision addressed to another person unless that decision is of direct and individual concern to the former.

53 According to settled case-law, persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of those factors, distinguishes them individually just as in the case of the person addressed (see, among others, Case 25/62 *Plaumann* v *Commission*, [1963] ECR 95, at p. 107; Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487, paragraph 20, and Case C-78/03 P *Commission* v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737, paragraph 33).

54 As regards the field of State aid, applicants who challenge the merits of a decision appraising aid taken on the basis of Article 88(3) EC or at the end of the formal examination procedure are considered to be individually concerned by that decision if their market position is substantially affected by the aid to which the contested decision relates (see, to that effect, *Cofaz and Others* v *Commission* paragraphs 22 to 25, and *Commission* v *Aktionsgemeinschaft Recht und Eigentum*, paragraphs 37 and 70).

55 In that regard, in addition to the undertaking in receipt of aid, competing undertakings have been recognised as individually concerned by a Commission decision terminating the formal examination procedure where they have played an active role in that procedure, provided that their position on the market is substantially affected by the aid which is the subject of the contested decision (see, inter alia, *Cofaz and Others* v *Commission*, paragraph 25, and *Comité d'entreprise de la Société française de production and Others* v *Commission*, paragraph 40).

56 The Court has thus held that the fact that an undertaking was at the origin of the complaint which led to the opening of the formal examination procedure, the fact that its views were heard and the fact that the conduct of that procedure was largely determined by its observations are factors which are relevant to assessment of the *locus standi* of that undertaking (see *Cofaz and Others* v *Commission*, paragraphs 24 and 25).

57 However, contrary to what is asserted by the Commission, it does not follow from the case-law of the Court that such participation in that procedure is a necessary condition for the finding that a decision is of individual concern to an undertaking within the meaning of the fourth paragraph of Article 230 EC, precluding the possibility of the undertaking putting forward other specific circumstances which distinguish it individually in a way that is similar to the case of the person addressed by that decision.

58 In the present case, it is clear from paragraphs 58 and 78 of the judgment under appeal that the Court of First Instance concluded that the appellant was not individually concerned by the contested decision in the light of two factors, namely, first, the limited role played by Sniace in the formal examination procedure and, secondly, Sniace's failure to demonstrate that its position on the market was substantially affected. As regards in particular the examination, within that analysis, of the first of those two factors, the Court of First Instance pointed out, in paragraph 59 of the judgment under appeal, that the appellant had played no more than a minor role in that procedure, given that it had not made any complaint to the Commission and that the procedure had not been largely determined by the observations submitted by Sniace.

59 It is nevertheless clear that even though in those paragraphs of the judgment under appeal the Court of First Instance may have treated active participation by the applicant in the formal examination procedure as a necessary condition for it to be regarded as individually concerned by the contested decision, that error of law would have no effect on the outcome of these proceedings.

60 It is clear from the case-law cited in paragraphs 54 and 55 of this judgment that the appellant ought, on any view of the matter, to have demonstrated that the contested decision was likely to substantially affect its position on the market. In the course of its unappealable assessment of the facts, the Court of First Instance concluded that in this case the appellant had not demonstrated that the contested decision was likely to harm its legitimate interests by substantially affecting its position on the market. For the reasons set out in paragraphs 34 to 40 of this judgment, none of the arguments advanced by the appellant in support of the first ground of appeal can call into question that conclusion.

61 Consequently, the second ground of appeal must be rejected as ineffective.

The third ground of appeal

Arguments of the parties

62 By its third ground of appeal, Sniace claims that, by dismissing its action as inadmissible, the Court of First Instance failed to have regard to its right to effective judicial protection as laid down in the Community case-law and in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, and Article 47 of the Charter of fundamental rights of the European Union, proclaimed on 7 December 2000 at Nice (OJ 2000 C 364, p. 1). It was, in its opinion, deprived of any legal remedy against the contested decision either in a national or Community court, even though that decision was vitiated by several patent errors.

63 The Commission, Lenzing Fibers and Land Burgenland consider that a person such as the appellant, which is not directly and individually concerned by a decision within the meaning of the fourth paragraph of Article 230 EC, cannot invoke the principle of effective judicial protection for the purposes of obtaining the right to bring an action against that decision.

Findings of the Court

64 It must be borne in mind that, in accordance with settled case-law of the Court, the conditions for admissibility of an action for annulment cannot be set aside on the basis of the appellant's interpretation of the right to effective judicial protection (Order of 8 March 2007 in Case C-237/06 P *Strack* v *Commission*, not published in ECR, paragraph 108; see also, to that effect, Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 44; Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425, paragraph 36; and order of 13 March 2007 in Case C-150/06 P *Arizona Chemical and Others* v *Commission*, not published in the ECR, paragraph 40).

65 In relation specifically to the subject-matter of these proceedings, the Court has had occasion to state that an individual who is not directly and individually concerned by a Commission decision relating to State aid and whose interests consequently could not be affected by the State measure covered by that decision cannot invoke the right to judicial protection in relation to that decision (order of 1 October 2004 in Case C-379/03 P *Pérez Escolar* v *Commission*, not published in ECR, paragraph 41).

66 It is clear from the consideration of the first two grounds of appeal that one of those two conditions was not satisfied in this case, since the appellant had not established that it was individually concerned by the contested decision.

67 It follows that there is no basis for the appellant's claim that the judgment under appeal infringes its right to effective judicial protection. The ground of appeal must therefore be rejected.

The fourth ground of appeal

68 The fourth ground of appeal has two parts.

The first part of the ground of appeal

— Arguments of the parties

69 The first part alleges that the principle of procedural equality has been infringed because in the space of a few months the same chamber of the Court of First Instance, in two comparable cases, came to opposite conclusions as regards the *locus standi* of third parties who intervene in a formal examination procedure relating to State aid. More particularly, Sniace refers to Case T-36/99 *Lenzing* v *Commission* [2004] ECR II-3597, where the action brought by Lenzing AG against a decision of the Commission relating to aid awarded by the Spanish authorities to Sniace was held to be admissible. The Court of First Instance arrived at that decision by relying on a set of circumstances and evidence which, by contrast, it rejected as irrelevant in the judgment under appeal. Two comparable situations were accordingly treated differently and that difference is not objectively justified.

70 In response to those arguments, the Commission states, first, that it has appealed against *Lenzing* v *Commission* (Case C-525/04 P), on the ground that Lenzing AG did not satisfy the conditions laid down by the case-law in relation to standing to bring legal proceedings, since it was not individually concerned by the decision at issue in that case. In other words, according to the Commission, any divergence of approach between the two judgments of the Court of First Instance should be resolved by taking the opposite direction to that advocated by the appellant, namely by holding the actions in both cases to be inadmissible.

71 The Commission, Lenzing Fibers and Land Burgenland then contend that the principle of equality is not applicable in these proceedings because there are certain objective differences between the two cases. In particular, the aid granted in the case which led to the judgment in *Lenzing* v *Commission* was of benefit in a market, that of viscose, on which the recipient undertaking and the applicant were in competition, whereas the aid authorised in the present case related exclusively to the production of lyocell, a market on which Sniace was not present. In addition, in comparison with the role played by Sniace in the case which is the subject of this appeal, the role of the applicant in *Lenzing* v *Commission* was more active since Lenzing made the complaint which led to the opening of the administrative procedure and provided additional information in the course of that procedure.

— Findings of the Court

72 Even if the fact that the Court of First Instance departs from the approach taken in a previous judgment were capable of constituting an infringement of the principle of equality of treatment and being relied on as such as a ground of appeal, it must be observed that in the present case, contrary to Sniace's submission, comparable situations were not treated differently.

73 From the unappealable assessment of the facts made by the Court of First Instance, as presented in paragraphs 61 to 78 of the judgment under appeal, it is clear that Sniace did not produce lyocell fibres, did not foresee doing so and was not able to substantiate any other reasons why its position on the market might, none the less, be substantially affected by the contested decision. In that regard, as stated by the Advocate General in point 59 of her Opinion, Sniace's situation could clearly be distinguished, and on an essential point, from that of the applicant in *Lenzing* v *Commission*. In that case, the applicant was in direct competition with the recipient of aid on the market concerned, and that was considered by the Court of First Instance to be a determining factor in its assessment of the applicant's capacity to bring proceedings against the Commission's decision.

74 In those circumstances the appellant cannot rely on that judgment to establish any infringement of the principle of equality of treatment. Consequently, the first part of the fourth ground of appeal must be rejected as unfounded.

The second part of the ground of appeal

— Arguments of the parties

75 By the second part, the appellant complains that the Court of First Instance infringed Articles 64 and 65 of its Rules of Procedure by refusing to allow applications made by Sniace for measures of organisation of the procedure, relating to the production of data and documents which were necessary, in its opinion, to clarify certain aspects of the case. Equally, the Court of First Instance failed to take into consideration the appellant's applications for the appearance of the parties and the hearing of several witnesses and experts.

76 The Commission, Lenzing Fibers and Land Burgenland contend that, in accordance with settled case-law, decisions allowing or rejecting applications for measures of organisation of the procedure made by the parties fall to be assessed by the Court of First Instance alone and, as a general rule, are not subject to review by the Court of Justice on appeal.

— Findings of the Court

77 As regards the assessment by the Court of First Instance of applications made by a party for measures of organisation of the procedure or enquiry, it must be pointed out that the Court of First Instance is the sole judge of any need to supplement the information available to it concerning the cases before it (see, inter alia, Case C-315/99 P *Ismeri Europa* v *Court of Auditors* [2001] ECR I-5281, paragraph 19; Case C-136/02 P *Mag Instrument* v *OHIM* [2004] ECR I-9165, paragraph 76, and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 67).

78 In particular, the Court of Justice has held that even where a request for the examination of witnesses, made in the application, refers precisely to the facts on which and the reasons why a witness or witnesses should be examined, it falls to the Court of First Instance to assess the relevance of the application to the subject-matter of the dispute and the need to examine the witnesses named (Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 70; *Dansk Rørindustri and Others* v *Commission*, paragraph 68, and order of 15 September 2005 in Case C-112/04 P *Marlines* v *Commission*, not published in ECR, paragraph 38).

79 Consequently, in the present case, the Court of First Instance was entitled to hold, in paragraph 81 of the judgment under appeal, that the material contained in the court documents and the explanations given at the oral procedure were sufficient to enable it to rule on the case before it, and that further measures of organisation of procedure were unnecessary.

80 Since the second part of the fourth ground of appeal is manifestly unfounded, this ground must be rejected in its entirety.

81 It follows from all the foregoing considerations that, since none of the grounds of appeal can be upheld, the appeal must be dismissed.

Costs

82 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission, Lenzing Fibers and Land Burgenland applied for costs against the appellant and the latter has been unsuccessful, the appellant must be ordered to pay the costs.

83 Under the first subparagraph of Article 69(4) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, Member States which have intervened in proceedings are to bear their own costs. In accordance with that provision therefore the Republic of Austria must be ordered to bear its own costs.

On those grounds, the Court (First Chamber) hereby:

1. Dismisses the appeal;

2. Orders Sniace SA to pay the costs;

3. Orders the Republic of Austria to bear its own costs.

[Signatures]